

IDENTIFICATION OF SUPPORT IN SPECIFICATION FOR AMENDMENT

1. Applicant respectfully submits that the substitution of "commodities" for "commodity" in line 1 of claim 1, comprises a grammatical clarification and that a definition of the same, provided in the original specification as filed on page 2: "commodities are used as material in the production of finished product; collectibles are sold by the piece while commodities are sold by weight and quality" (lines 5 - 6) is referenced directly by proposed Amendment A with substitution of 'weight' for 'quantity' as further discussed below.

2. Applicant respectfully recites in full the passage concerned immediately above:

This type of auction is not appropriate for commodities which are considered to possess several obvious and fundamental differences with the trading of collectibles: collectibles are discrete items while commodities are not; collectibles are bought to be held and/or sold again while commodities are used as material in the production of finished product; collectibles are sold by the piece while commodities are sold by weight and quality.

These distinctions are considered to distinguish the trading of commodity over the trading of all finished goods inclusive of new product sold over what is ostensibly the second largest known online auction. The difference between a commodity and finished goods, new or previously owned, is considered fundamental and only online auction systems facilitating the trading of commodities are considered to comprise prior art pertinent to the present invention. Prior art relating to online auctioning of financial instruments is similarly excluded by the basic distinction over the same provided by the physical nature of commodity. (p. 2, lines 2 - 13).

3. Applicant respectfully submits that specification of "the particular commodity" in line 4, of claim 1 instead of "the commodity" clarifies the action of specification of a single commodity by a prospective seller or buyer and is supported by the original specification as

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filed:

The direction of bidding, upward or downward, and the mode, incremental or open, may be selected by an initiator of a bid or offer thereby providing a single online auction system which is comprehensive of all commodity trading and capable of customization by the participants as appropriate to the particular commodity concerned as well as to particular participant references. (p. 9, lines 9 - 13)

4. Applicant respectfully submits that the substitution of the term ‘weight’ for ‘quantity’ in description of the amount of commodity concerned in lines 4, 8, & 13 of claim 1 provides further distinction to the term ‘commodity’ consistent with the distinction made on page 2 of the original specification as filed and recited above in paragraph 2: “collectibles are sold by the piece while commodities are sold by weight and quality” (p. 2, lines 5 - 6).
5. Applicant respectfully submits that the substitution of “quality” specified by a prospective seller or buyer in lines 5 & 9 of claim 1 with “specific commodity category dependent quality characteristics” is consistent with the language modifications described above, clarifies the specification of ‘quality’ as being expressed in characteristics dependent upon the commodity concerned, and is supported by the original specification as filed as: “the attributes utilized in specification must be variable with respect to various commodities in order to provide for specification of quality in terms appropriate to each commodity” (p. 9, Lines 2 - 3); and “(q)uality is considered to be comprised of different characteristics dependent upon the specific commodity category 21 concerned” (p. 17 , lines 19 - 20).

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6. Applicant respectfully submits that the addition of ‘weight’, ‘price’ and ‘quality characteristics’ in line 13 of claim 1 to “delivery and payment” as the “plurality of terms” included in “a listing for a specified lot of a particular commodity”, together with the elimination of the phrase “but not restricted to” clarifies the restriction of claim 1 intended thereby in a manner consistent with the clarification intended by amendment.
7. Applicant respectfully submits that the phrasing “any of the terms included in said plurality of terms” in lines 20 - 21 of claim 1, as opposed to the previous phrasing “at least one term from said plurality of terms” clarifies the availability of all of “said plurality of terms detailed in said listing” for variation in counter bids and counter offers in response to, respectively, open offers and open bids.

INTERVIEW SUMMARY***Background***

Applicant's representative, Peter Gibson, Reg. #34,605, conducted a telephonic interview on 21 January 2003 with the above identified Examiner regarding the above identified application for patent. A telephonic interview, in lieu of the personal interview requested 9 January 2003 and scheduled on January 14 2003 for 10 am 21 January 2003 pending receipt of a proposed amendment for consideration, was conducted because Examiner indicated that he would call Applicant's representative to confirm receipt of the proposed amendment but lacking this confirmation, Applicant's representative was requested by Examiner to telephone the Examiner on Friday, 17 January 2003. Applicant's representative did not receive any following communication from Examiner and telephoned Examiner at approximately 2:30 p.m. on the day requested, Friday, 17 January 2003, and left a message requesting a confirmation of receipt of the proposed amendment first transmitted by facsimile on the morning of 14 January 2003 and also hand delivered at approximately 12:30 p.m. to reception of Technology Center 3600 personally by Applicant's representative. Applicant's representative did not receive a return call from Examiner. Applicant's representative, not knowing whether Examiner was in receipt of the proposed amendment, called Examiner at precisely 10:00 a.m. on Tuesday 21 January 2003, as Monday 20 January 2003 was a Federal Holiday, and left a brief message indicating that an interview was expected at this time leaving Applicant's representative's telephone number and requesting a return call. Applicant's representative, knowing that Examiner is an assistant and that personal interviews with Assistant Examiners, almost invariably to the experience of Applicant's representative in over ten years of practice conducted with a senior Examiner acting in supervisory capacity usually in that supervisory Examiner's office, telephoned Examiner's supervisor using the telephone number given in the second Office action for use

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"(i)f attempts to reach the examiner by telephone are unsuccessful" (Second Office Action, p. 10) and spoke with Examiner's supervisor of record who informed Applicant's representative that Examiner had just left, was returning to his office, and had authority to conduct an interview without supervision. Applicant's representative telephoned the Examiner again and received a different outgoing message indicating that Examiner was on the telephone rather than out of his office. Applicant terminated this call and tried again, successfully, a few minutes later at approximately 10:10 a.m..

Summary of Telephonic Interview Conducted 21 January 2003

Applicant's representative first enquired of Examiner regarding receipt of the proposed amendment and was informed that Examiner was in receipt of the same. Applicant's representative asked if the proposed amendment had been transmitted by facsimile or hand delivery. Examiner replied that he didn't know which. Applicant's representative explained that he was hoping, with hand delivery, to keep the proposed amendment entirely within the responsibility of PTO employees and out of the hands of contractors in an effort to avoid delays often blamed on the latter. Examiner professed ignorance upon this subject.

Examiner enquired as to the location of Applicant's representative and was informed that Applicant's representative was at home. Applicant's representative enquired if the interview scheduled for this time could be conducted at this time telephonically. Examiner replied in the affirmative. Applicant's representative enquired as to the capability of the proposed amendment to achieve allowance in continued examination as a preliminary amendment. Examiner indicated that the proposed amendment would be insufficient therein because *Palmer* disclosed the sale of a commodity, hay, that was sold by weight.

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Applicant's representative enquired as to the efficacy of a proposed amendment incorporating the restrictions of claims 26 and 33 into the base claim with regard to allowable subject matter. Examiner indicated that because these claims had been rejected in the second Office action that this amendment would be insufficient to achieve allowance. Applicant's representative referenced the rejection encompassing claims 26 - 39: "rejected under 35 U.S.C. 103(a) as being unpatentable over *Auction This* and *Wurman* in view of *Forage Buy-Sell Contracts* by Palmer" and noted that while claim 33 had specific support in rejection in *Palmer*:

Concerning Claim 33, *Auction This* and *Wurman* disclose the invention substantially as claimed. See the discussion of Claim 1 above. They do not specifically disclose providing samples of a commodity by a seller. *Palmer* discloses this feature at page 8. It would have been obvious to one of ordinary skill in the art at the time of the invention for the seller to provide samples of auction commodities as disclosed by *Palmer* in the auction combination of *Auction This* and *Wurman* because this would have allowed bidders and sellers to adjust commodity pricing to reflect quality as specifically taught by *Palmer* at page 8. See also page 2, first paragraph and pages 5-8;

there was no support for rejection of claim 26. Examiner reiterated his position that claim 26 had been rejected in the second Office action and suggested that Applicant's representative consult with the inventor for the purpose of identifying a basis for allowance.

Applicant's representative informed Examiner that Applicant's representative and the inventor were in nearly daily contact, that several hours of personal discussion had been had with the inventor, that the inventor is in the business concerned and that the capability of a prospective buyer providing a model, as opposed to a prospective seller providing a sample, was unknown to both the inventor and Applicant's representative.

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Examiner was asked again if this did not distinguish the present invention over the prior art cited in rejection. Examiner again reiterated that claim 26 had been rejected and that if the grounds of rejection were insufficient then this issue might be addressed in continuation. Applicant's representative indicated that his choice was between continuation and appeal and that, in lieu of an indication of any basis for allowable subject matter, appeal would be preferred to continuation and enquired as to whether, specifically, the restriction of claim 26 overcame the outstanding rejection under 35 U.S.C. 103 because the prior art failed to disclose the capability of a prospective buyer providing a model.

Examiner indicated that the prior art would have to be searched again to determine whether a model provided by a prospective buyer was known to the prior art or not. Applicant's representative enquired as to the propriety of this action with regard to improper use of hindsight of the applicant's disclosure and referenced *in re Vaeck* as precluding a search of the prior art for an element or modification of elements suggested by the disclosure of the applicant rather than the prior art. Examiner pleaded ignorance of the reference and suggested that if this action were improper this would best be argued in continuation.

Applicant's representative enquired if there was any discernable basis providing distinction over the prior art. Examiner replied in the negative and suggested that Applicant's representative consult with the inventor for 'an approach' that might distinguish over the prior art. Applicant's representative indicated that, in the opinion of the inventor, the most salient feature of the presently claimed invention other than the capability of a prospective buyer providing a model was the use of counter bids and counter offers as given in response during 'interview' preceding the mailing of the second Office action in which Examiner had called Applicant's representative, and without mentioning the word 'interview' asked Applicant's representative what, specifically, distinguished the present invention over

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the prior art.

Applicant's representative asked if, then, there was no agreement. Examiner replied in the affirmative. Applicant's representative requested that a model provided by a prospective buyer be recognized, in written summary of the present interview, as being different than a sample provided by a prospective seller. Examiner asked if the wording 'model is considered different than sample by Applicant' was sufficient. Applicant's representative replied in the negative and indicated that it was desired that the written summary of the present interview specifically state that a model is different than a sample because it is provided by a prospective buyer, not a prospective seller. Examiner agreed to do this and mutual expressions of gratitude were expressed in closing.

Affirmation of the Veracity of the Substance of the Above Summary

Applicant's representative, Peter Gibson, Reg. #34,605, does hereby affirm, with his dated signature below, that the above summary of telephonic interview is true with regard to all substantive matters and further that said summary is accurate to the best of said representative's recollection.



Peter Gibson, Reg. #34,605 21 JANUARY 2003

Peter Gibson, Reg. #34,605

21 January 2003